IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16045 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUBHASHBHAI SAMBHAJIBHAI MORAY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16045 of 2003

MRS NISHA M PARIKH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 26/02/2004

ORAL JUDGEMENT

1. Mr. L.R. Pujari, learned AGP has placed on

record the affidavit in reply filed by respondent no.2. Same is kept on record.

2. In this petition under Article 226 of the Constitution of India the petitioner has challenged the order of detention order No: PCB/PASA/136/2003 dated 15-8-2003 (Annexure-A) passed by respondent No.2 under section 3 (1) of The Gujarat Prevention of Anti Social Activities Act (herein after referred to PASA Act) and prays for quashing and setting aside of the same and set the petitioner at liberty.

3. The petitioner was taken under detention on 15-8-2003 vide detention order at Annexure-A. The grounds of detention, copy whereof is at Annexure-B suggests that, one case under section 66 (1)(B), 65 (E) (A), 81 & 116 of Prohibition Act have been registered against the petitioner on 5-8-2003. Two unregistered cases have also been referred to relating to the incident of 13-7-2003 and 3-8-2003 respectively. The identity of the witnesses have been withheld invoking the privilege under section 9 (2) of the Act. Thus the petitioner has been alleged to be the bootlegger within the meaning of section 2 (b) of the Act.

It is stated by Ms. Parikh, learned advocate for the petitioner that the detention order passed under section 3(1) of the PASA Act against bootlegger Rasik Rasik Bhatko Bhanabhai Sarang has been set aside and quashed in Special Civil Application No. 14922 of 2003 vide order dated 27-11-2003.

4. It is not disputed that the petitioner is alleged to be the associate of the main bootlegger Rasik @ Rasik Bhatko Banabhai Sarang - the petitioner in Special Civil Application No.14922 of 2003. In the grounds of detention reference to the present petitioner as one of the associates of bootlegger Rasik @ Rasiko Bhatko is made. Same allegations have been levelled against Rasik @ Rasik Bhatko Bhanabhai Sarang as in the grounds of detention against the present petition.

5. Since the detention order passed against the co-detenu Rasik @ Rasik Bhatko Bhanabhai Sarang has been quashed and set aside in Special Civil Application No. 14922 of 2003 vide order dated 27-11-2003, for the reason of parity also the impugned detention order against present petitioner is required to be quashed and set aside.

6. In view of the above, the petition is granted and

accordingly allowed. The impugned detention order No: PCB/PASA/136/2003 dated 15-8-2003 (Annexure-A) passed under the Prevention of Anti Social Activities Act, 1985 by Respondent No.2 is quashed and set aside. The petitioner detenu - Subhashbhai Sambhajibhai Moray is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service permitted.

Dt: 26-2-2004 (N.G. Nandi, J)

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